

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CRAIG THARP §
v. § CIVIL ACTION NO. 6:05cv314
CAPTAIN GARY PINKERTON, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Craig Tharp, proceeding *pro se*, filed this civil rights lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On August 29, 2005, the Magistrate Judge ordered Tharp to correct his application for leave to proceed *in forma pauperis*. This order, along with the order referring the case to the Magistrate Judge, were sent to Tharp, but were returned to the Court marked "Refused."

On September 12, 2005, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court.

A copy of this Report was sent to Tharp at his last known address, return receipt requested, but no objections have been filed; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*). The Court notes that Tharp apparently received an order on September 15, 2005, giving him until October 12, 2005 to submit a new application for leave to

proceed *in forma pauperis*, but he has not done so; this is further evidence of his failure to prosecute or to obey an order of the Court.

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge, and has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on the claims raised in this lawsuit is hereby SUSPENDED from the date of the filing of this lawsuit until 60 days following the date of entry of final judgment in this case. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 24th day of October, 2005.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE